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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 AARON HARRIS,

9 Plaintiff,

v.

10 NATIONAL RAILROAD PASSENGER
11 CORPORATION d/b/a AMTRAK,

12 Defendant.

CASE NO. C18-134 BHS

ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

13 This matter comes before the Court on Defendant National Railroad Passenger
14 Corporation d/b/a Amtrak's ("Amtrak") motion for partial summary judgment on
15 plaintiff's consumer protection act claim. Dkt. 94. The Court has considered the
16 pleadings filed in support of and in opposition to the motion and the remainder of the file
17 and hereby grants in part and denies in part the motion for the reasons stated herein.

18 **I. PROCEDURAL AND FACTUAL BACKGROUND**

19 Plaintiff Aaron Harris ("Harris") purchased a ticket to ride the Amtrak 501 train
20 that left Seattle on December 18, 2017. Dkt. 118, ¶ 1. On the day of the trip, Harris paid
21 \$10.40 for a Lyft ride to the train station. *Id.* ¶ 3. On the way to Portland, the train
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1 derailed and allegedly injured Harris. Sometime after January 4, 2018, Amtrak refunded
2 the cost of Harris's ticket. *Id.* ¶ 4.

3 On January 12, 2018, Harris filed a complaint against Amtrak in King County
4 Superior Court for the State of Washington. Dkt. 1-1. Harris asserts a claim of
5 negligence for personal injuries and a claim under Washington's Consumer Protection
6 Act ("CPA"), RCW Chapter 19.86. *Id.* On January 29, 2018, Amtrak removed the
7 matter to this Court. Dkt. 1.

8 On June 27, 2019, Amtrak filed the instant motion for summary judgment on
9 Harris's CPA claim. Dkt. 94. On July 29, 2019, Harris responded. Dkt. 114. On August
10 2, 2019, Amtrak replied. Dkt. 119. On August 8, 2019, Harris filed a surreply. Dkt. 129.

11 II. DISCUSSION

12 A. Summary Judgment Standard

13 Summary judgment is proper only if the pleadings, the discovery and disclosure
14 materials on file, and any affidavits show that there is no genuine issue as to any material
15 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
16 The moving party is entitled to judgment as a matter of law when the nonmoving party
17 fails to make a sufficient showing on an essential element of a claim in the case on which
18 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
19 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
20 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
21 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
22 present specific, significant probative evidence, not simply "some metaphysical doubt").

1 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
2 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
3 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
4 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
5 626, 630 (9th Cir. 1987).

6 The determination of the existence of a material fact is often a close question. The
7 Court must consider the substantive evidentiary burden that the nonmoving party must
8 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
9 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
10 issues of controversy in favor of the nonmoving party only when the facts specifically
11 attested by that party contradict facts specifically attested by the moving party. The
12 nonmoving party may not merely state that it will discredit the moving party’s evidence
13 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
14 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
15 nonspecific statements in affidavits are not sufficient, and missing facts will not be
16 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888–89 (1990).

17 **B. Amtrak’s Motion**

18 Amtrak moves for summary judgment on Harris’s CPA claim on two grounds.
19 First, Amtrak argues that Harris may not recover damages for personal injury under the
20 CPA. Dkt. 94 at 7–8. This is a well-settled issue of law that Harris does not dispute.
21 Therefore, to the extent that Harris seeks damages for personal injuries under the CPA,
22 the Court grants the motion.

1 Second, Amtrak argues that Harris “has not produced evidence of the types of
2 damages to ‘business or property’ that are recoverable under the [CPA].” Dkt. 94 at 4.
3 In response, Harris submitted evidence of his injuries declaring that (1) he lost the use of
4 his money between the date he purchased the ticket and the date Amtrak refunded the
5 purchase price and (2) he paid for a ride to the train station the morning of his trip. Dkt.
6 118. In reply, Amtrak moves to strike Harris’s declaration because he failed to timely
7 disclose this evidence. Dkt. 119 at 3. Thus, Amtrak morphed this summary judgment
8 motion into a discovery motion or a motion in limine. The Court declines to consider
9 Amtrak’s motion to strike because it is presented for the first time in a reply depriving
10 Harris of the due process protections of notice and an opportunity to be heard.¹
11 Accordingly, the Court denies Amtrak’s motion to the extent that Harris has failed to
12 submit admissible evidence of his injury.

13 In the alternative, Amtrak has refunded Harris’s ticket cost and offers to pay his
14 other alleged actual damages under the CPA. Dkt. 119 at 6. Amtrak argues that, once it
15 pays Harris’s actual damages, “there is simply no injury, and no grounds to permit
16 plaintiff’s CPA claim to move forward.” Dkt. 94 at 10. Amtrak provides no citation for
17 this position, and the Court finds it to be without merit. If Harris is able to prove his CPA
18 claim, he may recover actual damages, treble damages (up to a maximum of \$25,000),
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20 ¹ While motions to strike are proper in a reply, Local Rules W.D. Wash. LCR 7(g), this rule is
21 generally used to strike evidence that is inadmissible. Here, Amtrak moves to strike under Fed. R. Civ. P.
22 26 and 37, which necessitates notice and an opportunity to respond. Moreover, Harris’s surreply on this
issue is improper because it includes substantive argument. However, to the extent that Harris seeks to
strike Amtrak’s discovery arguments, the Court declines to consider Amtrak’s arguments.

1 attorney's fees, and statutory costs. *See* RCW 19.86.090. Amtrak cites no authority for
2 the proposition that paying the alleged actual damages precludes Harris from seeking
3 these other forms of damages. Moreover, Harris seeks "injunctive relief to protect the
4 public." Dkt. 1-1, ¶ 6.2. This request alone is sufficient to overcome summary judgment.
5 For example, if the jury finds that Amtrak engaged in the unfair and deceptive act of
6 selling train tickets for a route that did not comply with the federal regulations governing
7 preventative measures at certain speed reduction locations, bridges, or tunnels, then
8 Harris may seek an injunction to prevent such future sales in Washington. Therefore, the
9 Court denies Amtrak's motion to the extent Amtrak asserts that Harris has been or will be
10 reimbursed for his actual damages.

11 **III. ORDER**

12 Therefore, it is hereby **ORDERED** that Amtrak's motion for partial summary
13 judgment on plaintiff's consumer protection act claim, Dkt. 94, is **GRANTED in part**
14 and **DENIED in part** as stated herein.

15 Dated this 9th day of August, 2019.

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18 **BENJAMIN H. SETTLE**
United States District Judge
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